

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
ANGEL GUZMAN,

Plaintiff,

-against-

**ANSWER TO COMPLAINT  
ON BEHALF OF CITY**

13 CV 8539 (NRB)

THE CITY OF NEW YORK, POLICE OFFICER LANCE  
SARACENO (TAX 951212) Individually and in his  
Official Capacity, and POLICE OFFICERS "JOHN DOE"  
1-3, Individually and in their Official Capacities, the name  
"JOHN DOE" being fictitious as the true names are not  
presently known,

Jury Trial Demanded

Defendants.  
----- x

Defendant City of New York,<sup>1</sup> by its attorney, Zachary W. Carter, Corporation  
Counsel of the City of New York, for its Answer to the Complaint, respectfully alleges, upon  
information and belief, as follows:

1. Denies the allegations set forth in paragraph "1" of the Complaint, except  
admits that plaintiff purports to bring this action as stated therein.
2. Denies the allegations set forth in paragraph "2" of the Complaint, except  
admits that plaintiff purports to bring this action as stated therein.
3. Denies the allegations set forth in paragraph "3" of the Complaint, except  
admits that plaintiff purports to invoke the jurisdiction of this Court as stated therein.
4. Denies the allegations set forth in paragraph "4" of the Complaint, except  
admits that plaintiff purports to lay venue as stated therein.

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<sup>1</sup> Upon information and belief, the individual identified in the caption as "Police Officer Lance Saraceno (Tax 951212)" has not been served with process and/or has not requested legal representation from the Office of the Corporation Counsel and, therefore, is not yet a party to this action

5. Paragraph "5" of the Complaint sets forth no averments of fact and therefore requires no response.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "6" of the Complaint.

7. Admits the allegations set forth in paragraph "7" of the Complaint.

8. Denies the allegations set forth in paragraph "8" of the Complaint, except admits that the City of New York is a municipality organized under the laws of the State of New York and that it maintains a police department.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "9" of the Complaint, except admits that Lance Saraceno was employed by the City of New York as a police officer and that plaintiff purports to proceed as stated therein.

10. Paragraph "10" of the Complaint sets forth legal conclusions rather than averments of fact and therefore requires no response.

11. Paragraph "11" of the Complaint sets forth legal conclusions rather than averments of fact and therefore requires no response.

12. Paragraph "12" of the Complaint sets forth legal conclusions rather than averments of fact and therefore requires no response.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "13" of the Complaint.

14. Denies the allegations set forth in paragraph "14" of the Complaint.

15. Denies the allegations set forth in paragraph "15" of the Complaint.

16. Denies the allegations set forth in paragraph "16" of the Complaint.

17. Denies the allegations set forth in paragraph "17" of the Complaint.

18. Denies the allegations set forth in paragraph "18" of the Complaint.

19. Denies the allegations set forth in paragraph "19" of the Complaint, except admits that plaintiff was transported to the 33<sup>rd</sup> Precinct stationhouse.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "20" of the Complaint.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "21" of the Complaint.

22. Denies the allegations set forth in paragraph "22" of the Complaint.

23. Denies the allegations set forth in paragraph "23" of the Complaint.

24. Denies the allegations set forth in paragraph "24" of the Complaint.

25. Denies the allegations set forth in paragraph "25" of the Complaint.

26. Denies the allegations set forth in paragraph "26" of the Complaint.

27. Denies the allegations set forth in paragraph "27" of the Complaint.

28. Denies the allegations set forth in paragraph "28" of the Complaint.

29. Denies the allegations set forth in paragraph "29" of the Complaint, except admits that plaintiff's criminal charges were dismissed on or about October 17, 2013.

30. Denies the allegations set forth in paragraph "30" of the Complaint.

31. In response to the allegations set forth in paragraph "31" of the Complaint, defendant repeats and realleges all of the responses contained within the preceding paragraphs of this answer, as if fully set forth herein.

32. Denies the allegations set forth in paragraph "32" of the Complaint.

33. Denies the allegations set forth in paragraph "33" of the Complaint.

34. Denies the allegations set forth in paragraph "34" of the Complaint.

35. Denies the allegations set forth in paragraph "35" of the Complaint.

36. Denies the allegations set forth in paragraph "36" of the Complaint.

37. In response to the allegations set forth in paragraph "37" of the Complaint, defendant repeats and realleges all of the responses contained within the preceding paragraphs of this answer, as if fully set forth herein.

38. Denies the allegations set forth in paragraph "38" of the Complaint.

39. Denies the allegations set forth in paragraph "39" of the Complaint.

40. In response to the allegations set forth in paragraph "40" of the Complaint, defendant repeats and realleges all of the responses contained within the preceding paragraphs of this answer, as if fully set forth herein.

41. Denies the allegations set forth in paragraph "41" of the Complaint.

42. Denies the allegations set forth in paragraph "42" of the Complaint.

43. Denies the allegations set forth in paragraph "43" of the Complaint.

44. Denies the allegations set forth in paragraph "44" of the Complaint.

45. Denies the allegations set forth in paragraph "45" of the Complaint.

46. Denies the allegations set forth in paragraph "46" of the Complaint.

47. Denies the allegations set forth in paragraph "47" of the Complaint.

48. Denies the allegations set forth in paragraph "48" of the Complaint.

49. Denies the allegations set forth in paragraph "49" of the Complaint.

50. Denies the allegations set forth in paragraph "50" of the Complaint.

51. Denies the allegations set forth in paragraph "51" of the Complaint, except admits that plaintiff's criminal charges were dismissed on or about October 17, 2013.

52. Denies the allegations set forth in paragraph “52” of the Complaint.

53. In response to the allegations set forth in paragraph “53” of the Complaint, defendant repeats and realleges all of the responses contained within the preceding paragraphs of this answer, as if fully set forth herein.

54. Denies the allegations set forth in paragraph “54” of the Complaint.

55. Denies the allegations set forth in paragraph “55” of the Complaint.

56. Denies the allegations set forth in paragraph “56” of the Complaint.

57. In response to the allegations set forth in paragraph “57” of the Complaint, defendant repeats and realleges all of the responses contained within the preceding paragraphs of this answer, as if fully set forth herein.

58. Denies the allegations set forth in paragraph “58” of the Complaint.

59. Denies the allegations set forth in paragraph “59” of the Complaint.

60. Denies the allegations set forth in paragraph “60” of the Complaint.

61. Denies the allegations set forth in paragraph “61” of the Complaint, including its subparts.

62. Denies the allegations set forth in paragraph “62” of the Complaint, including its subparts.

63. Denies the allegations set forth in paragraph “63” of the Complaint.

64. Denies the allegations set forth in paragraph “64” of the Complaint.

65. Denies the allegations set forth in paragraph “65” of the Complaint.

66. Denies the allegations set forth in paragraph “66” of the Complaint.

67. Denies the allegations set forth in paragraph “67” of the Complaint.

68. Denies the allegations set forth in paragraph “68” of the Complaint.

69. Denies the allegations set forth in paragraph “69” of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

70. The Complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

71. Defendant has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

72. At all times relevant to the acts alleged in the Complaint, the duties and functions of the municipal defendant’s officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City has governmental immunity from liability.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

73. Any injury alleged to have been sustained resulted from plaintiff’s own culpable or negligent conduct or the culpable or negligent conduct of others and was not the proximate result of any act of the defendant.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

74. Plaintiff cannot obtain punitive damages against the City of New York.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

75. Plaintiff provoked any incident that occurred.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

76. Plaintiff’s claims may be barred, in whole or in part, because plaintiff failed to comply with all conditions precedent to suit.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

77. Plaintiff's claims may be barred, in part, by the applicable statute of limitations.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

78. There was reasonable suspicion and/or probable cause for any searches.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

79. There was probable cause for plaintiff's arrest and/or detention and/or prosecution.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

80. Plaintiff failed to mitigate damages.

**WHEREFORE**, defendant City of New York requests judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
February 20, 2014

ZACHARY W. CARTER  
Corporation Counsel of the  
City of New York  
*Attorney for Defendant City*  
100 Church Street  
New York, New York 10007  
(212) 227-0414

By:                     /S                      
Karl J. Ashanti, Esq.

(By ECF & Mail)

TO: THE LAW OFFICES OF MICHAEL S.  
LAMONSOFF, PLLC  
Matthew Shroyer, Esq.  
*Attorneys for the Plaintiff*  
80 Maiden Lane, 12<sup>th</sup> Floor  
New York, New York 10038  
(212) 962-1020



**DECLARATION OF SERVICE BY ECF AND FIRST-CLASS MAIL**

I, **Karl J. Ashanti**, declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury, that on **February 20, 2014**, I served the annexed **Answer to Complaint on behalf of City** by ECF and by depositing a copy of the same, enclosed in a first-class postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Postal Service, within the State of New York, upon the following:

THE LAW OFFICES OF MICHAEL S.  
LAMONSOFF, PLLC  
Matthew Shroyer, Esq.  
80 Maiden Lane, 12<sup>th</sup> Floor  
New York, New York 10038

Dated: New York, New York  
February 20, 2014

\_\_\_\_\_/S\_\_\_\_\_  
Karl J. Ashanti, Esq.

Index No. 13 CV 8539 (NRB)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANGEL GUZMAN,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER  
LANCE SARACENO (TAX 951212) Individually  
and in his Official Capacity, and POLICE  
OFFICERS "JOHN DOE" 1-3, Individually and in  
their Official Capacities, the name "JOHN DOE"  
being fictitious as the true names are not presently  
known,

Defendants.

**ANSWER TO COMPLAINT ON BEHALF OF  
CITY**

***MICHAEL A. CARDOZO***

*Corporation Counsel of the City of New York  
Attorney for Defendant  
100 Church Street  
New York, N.Y. 10007*

*Of Counsel: Karl J. Ashanti, Esq.  
Tel: (212) 356-2371  
NYCLIS No. 2013-055263*

*Due and timely service is hereby admitted.*

*New York, N.Y. ...., 2014.....*

*..... Esq.*

*Attorney for .....*